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TECHNOLOGY CENTER 2100

In re Application of: Yasuda, et al.
Application No. 10/767,778
Filed: 30 January 2004
For: FILE REPLICATION METHOD FOR
DISTRIBUTED FILE SYSTEMS

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the petition filed 7 November 2005, to make the above-identified application special, under 37 CFR § 102(d) and MPEP § 708.02(VIII): Accelerated Examination.

The Petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In this case, the petition fails to properly discuss the claimed subject matter in accordance with the section (e) requirements *supra*.

The petition filed 7 November 2005 fails to discuss the **claimed limitations** with respect to the references in accordance with the requirements of 37 CFR 1.111 (b) and (c). Specifically, in referencing the claim 4 inventive feature, the Petition does not actually (correctly) discuss the limitations set forth in the claim.

Claim 4 specifies a limitation of "judging whether or not replication should be performed by using the management table and the replication information".

The petition states, however, the distinguishing element of claim 4 is "judging whether or not a replicating operation should be performed **with execution of said file access request** by using said management table and said replication information". (emphasis added).

From the foregoing, it is clear that the petition's discussion language is not commensurate with the identified claim 4 limitation. Claim 4 has no recitation "with said **file access request**" as the petition avers. Therefore, in this case, the petition's language/limitation is narrower than the actual claimed recitation, and the petition misrepresents the claim 4 invention. Petitioner must specifically identify the distinguishing claim language in accordance with the section (e) discussion requirements in order to show "how the claimed subject matter is patentable over the references."

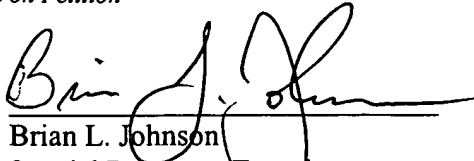
Further, Applicant's conclusion statement on page 4 of the petition i.e. "Therefore, since the cited references fail to teach or suggest the above described (1)-(3) features of the present invention as recited in independent claims 1, 4, 9 and 12 in combination with the" appears to require all three limitations in each independent claim (which is not the case).

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Application SN 10/767,778
Decision on Petition

A handwritten signature in black ink, appearing to read "Brian L. Johnson", written over a horizontal line.

Brian L. Johnson
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